

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

JUDGMENT

Badri Prasad & vs. The State of Rajasthan.

D.B.Cri. Jail Appeal No.31/2003

Under Section 374 (2) Cr.P.C.
against the judgment and conviction dated
19.10.02 passed by the Addl. Sessions
Judge (Fast Track), Sriganganagar, in
Sessions Case No.37/2002.

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Date of Order:

27th July, 2007.

PRESENT

**HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI**

Mr.Kulwant Singh	]	for the appellant.
Mr.B.K.Vyas	]	

Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

This appeal has been filed by the accused appellant against the judgment of Addl. Sessions Judge (Fast Track) , Sriganganagar dated 19.10.02 The case against the accused appellant was registered on the lodging of a first information report

No.14/2001 and FIR No. 138/2001 at Police Station Sadar , Sriganganagar. This FIR was the consequence of an investigation by an Executive Magistrate in a case under Section 174 Cr.P.C. The proceedings were initiated on the basis of an information given by Rajendra Kumar Saharan, s/o Hazari Ram, elder brother of the accused. According to the report so lodged , the first informant stated that his brother Bardri Prasad, accused, was married to Bindu, d/o Ramkaran r/o Thakrubas, Peelibanga, 5-6 years back. On the fateful day, at about 04.15 AM , his brother Bardri Prasad had come to him weeping, informed him that his wife has tied a rope to an iron rod in the room and has hanged herself. He has cut the rope , laid her on floor, on which Rajendra Kumar came to the police station and has lodged the report. After preliminary investigation by the Magistrate, it was felt that the matter requires police investigation and the first information report was lodged at the police station and investigations were conducted.

After investigation, charge sheet was filed in the court of Magistrate under Section 302 and 201 IPC. The case was committed to the court of Sessions from where it was gave over to the trial court.

The trial court framed charges against the accused under Section 302 and 201 IPC. The accused denied the charges and claimed trial. At the trial, the prosecution examined 12 witnesses and exhibited 30 documents. The accused was examined under section 313 Cr.P. He also produced one defence witness and exhibited five defence documents. The trial court, after considering the case of the prosecution came to the conclusion that the first informant Rajendra Kumar is the real brother of the accused, who has turned hostile and he has not supported the case of the prosecution so much so that he has denied giving of the report. In his court statement the first informant even stated that the accused was not at home at the time of occurrence. The court observed that PW/3 Rajendra Kumar, the first informant, is not coming out correctly because he is the brother of the accused. The trial court found that the Executive Magistrate Mr.Y.A.Khan, PW/7, after receiving the report, had gone to the scene of occurrence where he examined even the accused who informed him about the incident and according to the statement of PW/7 Rajendra Kumar the trial court found that the accused was at the scene of occurrence and, therefore, his presence at the house was established. The trial court further examined the prosecution case and found that the deceased was lying on the floor and there was a trail of blood coming out from the right side on the

right portion of the face . There was a blood mark on the chin as well. The body of the deceased was subjected to post mortem. In post-mortem the following injuries were found on the person of the deceased:-

“1- लीगेचर मार्क गले के चारों तरफ 12 x $\frac{3}{4}$ इंच चौड़ाई लिए हुए गर्दन के मध्य भाग में जो चारों तरफ एक ही सामान स्थिति में था, यह लीगेचर मार्क थायराइड कार्टिलेज के नीचे था। डिसेक्शन में पाया कि गर्दन की मसल्स में खून था। टेरोटेड धमनी की दीवार कुघली हुई थी, मूँह से स्लाइवा निकली हुई थी, जो कि मूँह के दायें एंगल से निकलकर दायें गाल पर लगी हुई थी।

2- खरूड $\frac{1}{2}$ x $\frac{1}{4}$ इंच माथे पर बाई तरफ"

It was found that all the injuries were anti mortem . The reason of death was asphyxia, due to strangulation. The doctor in cross-examination has stated that if some one commits suicide by putting rope in the fact the kind of mark which was found on the person of the deceased would not be there. According to PW/2. if any body commits suicide by putting rope in his neck then circular mark is not seen and what is seen is ligature mark extending up to

ears should be available. The trail of blood being on the right side, is also indicative that she was killed while sleeping and, therefore, the blood goes on the right side. In case of death by hanging, blood trickles down from the lips to chin, whereas in this case, blood trickles to the right side.

The executive Magistrate who has inspected the site has suspected the nature of rope and its condition and has stated that it is not conducive with the defence version. Further, the rope was 3ft 6" long. The deceased was 4ft 7" in length. The total height was 6ft 10". After deducting 2 ½ length of the trunk, these statistics suggest that the height is not commensurate with the hypothesis of suicide by hanging. Two pieces of rope have been stained with human blood and that being the position it is not certain that it was the rope hanging with the iron rod which was responsible for the death. In fact the rope was put on the neck while the lady was sleeping. This hypothesis is in conformity with the injuries available on the right hand of the accused which is an abrasion. This is possible when the rope was pulled up by the accused, while strangulating the deceased. The saliva and blood have also gone on the right side of the cheek, that also suggests that the death was while she was sleeping. Above all, a false explanation of alibi is there, whereas the

husband was put to explain the circumstances in which the deceased committed suicide as he was in her company during that night and having not explained that, the husband can be held guilty.

Mr.Kulwant Singh, learned counsel appearing on behalf of the accused , stressed that on the strength of the book of Modi's Jurisprudence that the ligature mark and the saliva show that she had died by hanging. The Book was not put to the doctor. Without putting the medical Text Book to the doctor the same cannot be used in arguments. Further, the illustration as relied on by the learned counsel is not in terms of the medical jurisprudence, and that view of the matter, it is not of any consequence. The learned counsel for the appellant further submitted that the accused was not in home when the incident has occurred. This by itself is a falsehood on the case of defence. It was on the information of the accused that Rajendra Kumar went to lodge the report. Therefore, the statement that the accused was not present at the scene of occurrence, is not sustainable. The learned counsel for the appellant further stressed that no blood has been found on the pillow . But this cannot mean that the accused is not guilty of the charges proved against him. Therefore, the case as put forward by the appellant, cannot be believed.

We have heard learned counsel and have given our thoughtful consideration to the facts narrated herein above and have found that they are of no consequence.

The finding of the trial court, wherein presence of the accused has been established, appears to be an irresistible conclusion because at 04.15 AM the accused had gone to his brother to inform him about the incident. Thereafter the report was lodged. The magistrate enquired from the accused and that was before the lodging of the report and the accused at that time had given his presence at home. Thus, his presence is established. The case of hanging is negated by medical evidence. When the case of hanging is negated, the theory of suicide is negated. The accused has not explained the circumstances in which she died, and he has taken a false plea. It puts us on guard and in that background we feel persuaded to hold that the false plea taken by the husband is for the reason that his bona fides were not clear and in that background, the death of the deceased wife not having taken up by hanging, strangulation is the other mode. Husband and wife being together, the burden comes squarely on the accused. If there was any other person, the husband would have come with his name. Informing his

brother of hanging, is putting the investigation on wrong trial. Circumstances and medical evidence suggest that the lady was killed by strangulation. The irresistible explanation would be that husband had done it. In this background, the findings of the trial court are required to be affirmed.

Consequently, we hold that the accused is guilty of charges levelled against him. The conviction and sentence are maintained. He is behind the bars, he should serve out his sentence. The appeal is accordingly, dismissed.

(MUNISHWAR NATH BHANDARI),J.

(BHAGWATI PRASAD), J.